IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 801 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES

2. To be referred to the Reporter or not? NO

3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? NO

R.G. BENDBAR

Versus

HEMANTKUMAR S. PARIKH

Appearance:

MR PRANAV G DESAI for Petitioner

MR SP HASURKAR for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR PG DESAI, PUBLIC PROSECUTOR for Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 23/04/99

ORAL JUDGEMENT

1. The original complainant - Food Inspector has preferred this appeal against the order of acquittal recorded against the original accused Nos.1 and 2 who are respondents No.1 and 2. The respondents No.1 and 2 were tried for an offence u/s 7 punishable under section 16 of the Prevention of Food Adulteration Act, 1958

[hereinafter referred to as 'the Act'].

2. From the record, the facts emerges are as under:-

The respondent - accused No.1 [hereinafter referred to as 'the accused'] was at the relevant time dealing in articles of food. On 6/1/1987, the Food Inspector in discharge of his duties, after soliciting the services of a panch witness collected a sample of edible oil at about 10.15 hrs. The edible oil was in a tin. The respondent - accused No.1 was informed about the fact that the sample was required to be collected for the purpose of analysis. 375 Grams of groundnut oil was taken as a sample. The sample so collected was divided in three clean dry bottles which were sealed in accordance with the provisions contained in the Prevention of Food Adulteration Rules [hereinafter referred to as 'the Rules']. After sealing the sample bottles, the complainant forwarded one sample bottle to the public analyst in accordance with the Rules. The public analyst Mr. S.M.Shah received the sample and the receipt of which is produced vide exh.28. The remaining two samples were forwarded to the Local Health Authority in accordance with the Rules. The receipt issued by the Local Health Authority is produced vide exh.29. The Public Analyst Report, produced on record vide exh.39 revealed that the sample did not confirm to the standards laid down in the provisions of the Prevention of Food Adulteration Act and the Rules. It appears that, after receipt of the report and after obtaining the consent as required u/s 20 of the Act, complaint was filed. It appears that at the time of collecting sample, the accused No.1 disclosed to the complainant that the accused No.1 purchased the groundnut oil, from which sample was taken, from one Thakar Jayendrakumar Kantilal. Accused No.1 pointed out the bill to the complainant and after taking the xerox copy of the said bill, the original was returned to the accused. It is in view of this material produced by the accused No.1, the complainant also joined accused No.2. It is this accused No.2 who gave an application to the Court for forwarding the sample to the Central Food Laboratory. The Court called for the sample from the Local Health Authority and forwarded the sample to the Central Food Laboratory vide exh.12. Central Food Laboratory forwarded its report. Reading the report, it is clear that the sample was forwarded with the memorandum of the Court and was in a condition fit for analysis. About the conditions of the seals on the container and outer cover, on receipt it is pointed out that all the seals of sample container were intact and unbroken. The seal fixed on the container and

the outer cover of the sample tallied with the specimen. Impression of the seal on the memorandum separately forwarded. Central Food Laboratory has opined that the sample did not confirm to the standard of groundnut oil laid down in item A.17.3 of PFA Rules [1955], inasmuch as [1] Iodine value was above the maximum prescribed limit [2] Bellier turbidity temperature was less than the minimum prescribed limit, [3] sample gave positive halphen test. The colour obtained in the test was above the tolerance limit allowed under Rule 44[e] of the PFA Rules [1955]. The Central Food Laboratory opined that the sample was adulterated.

It appears that, before the trial Court, it was submitted that the sample was not collected in the manner provided in the Rules. However, looking to the evidence, the Court has not accepted the same. It was submitted before the trial Court that the sealing, packing etc. were done by the peon. However, the trial Court rejected the contention as the procedure was followed in presence of the complainant and as per his direction. Looking to the evidence of complainant which is in detail, it is clear that procedure for collecting the sample and forwarding the same has been followed and there is no merit in the contention with regard to the procedure being not followed while collecting the sample from the accused No.1 or forwarding the same to the authority and Public Analyst. The trial Court has rightly not accepted the contention that the sample was not collected in accordance with law. From the evidence, it is clear that the sample was collected in accordance with rules and was also forwarded in accordance with the Rules to the Public Analyst, Local [Health] Authority and Central Food Laboratory.

3. It appears that the trial Court has erred in acquitting the accused on the ground that the consent accorded by the competent authority is not in accordance with law. Mr. Desai, learned advocate appearing for the complainant submitted that, in the case of A.K.Roy v/s State of Punjab reported in AIR 1986 SC 210, on which reliance is placed by the trial Court for acquitting the accused has been considered by the Apex Court in case of Suresh H. Rajput V/s Bharatiben Pravinbhai reported in AIR 1990 SC 283. The Court observed in para - 9 as under:-

"9. Learned counsel for the respondents sought to rely on the decision of this Court in A.K.Roy vs. State of Punjab [1986] 4 SCC 326 : AIR 1986 SC 2160. That was a case where

sub-delegation was made by the Local [Health] Authority to the Food Inspector for laying the prosecution. It was not a case of granting any sanction by him. In fact, this Court had pointed out in paragraph 9 that "it is common ground that the prosecution in the instant case has not been launched either by or with the written consent of the Central Government or the State Government. It, therefore, becomes necessary to ascertain whether the Food Inspector, Faridkot was duly authorised to launch a prosecution." Then this Court had examined the question and held in paragraph 11 that "the terms of section 20[1] of the Act do not postulate further delegation by the person so authorised; he can only give his consent in writing when he is satisfied that a prima facie case exists in the facts of a particular case and records his reasons for the launching of such prosecution in the public interest." In other words, this Court had held that the local {Health} authority has no power to delegate the power to launch prosecution to the Food Inspector, but in terms of section 20[1], the authority can give its consent in writing when it is satisfied that prima facie case exists in the facts of a particular case for laying the prosecution."

The Court also reiterated the views expressed in the case of State of Bihar in para - 11 as under :-

"11. In State of Bihar vs. P.P.Sharma, [1992] Supp [1] SCC 222 : [1991 AIR SCW 1034], one of us, [K. Ramaswamy, J.] considered the effect of the sanction under section 197 of the Criminal Procedure Code at page 268 [of SCC] : [Atp. 1066 of AIR] thus :-

"It is equally well settled that before granting sanction, the authority or the appropriate Government must have before it the necessary report and the material facts which prima facie establish the commission of offence charged for and that the appropriate Government would apply their mind to those facts. The order of sanction is only an administrative act and not a quasi judicial one nor is a lis involved. Therefore, the order of sanction in support thereof as was contended by Shri Jain. But the

basic facts that constitute the offence must be apparent on the impugned order and the record must bear out the reasons in that regard."

4. Thus, when the analysis report and other relevant material in connection therewith were placed before the sanctioning authority for according consent and the appropriate authority, after considering the material, has accorded consent vide exh.41 in the facts and circumstances of the case, it cannot be said that the consent is not in accordance with law. Alongwith the letter exh.40, the Food Inspector has forwarded nine documents namely, notice, receipt, cash memo, panchnama, warranty, receipts issued by Local [Health] Authority, Public Analyst's report, notification and other relevant papers. If after perusing all these documents, the consent is accorded, it cannot be said that the consent is not in accordance with law and therefore, the trial Court has seriously erred in coming to the conclusion that sanction accorded u/s 20[1] of the Act is not in accordance with law. Thus, the order of acquittal requires to be quashed and set aside.

5. Mr. Hasurkar, learned counsel appearing for the respondents accused submitted that the prosecution is not in the interest of justice. This Court had an occasion to consider similar contention in case of The State of Gujarat V/s Chandraprakash Khushaldas Sindhi reported in 1999 [1] Guj. Law Herald at page 29. The Head Note 'A' reads as under :-

"A. Prevention of Food Adulteration Act, 1954
- Offence under the Act are antisocial crimes affecting the health and well-being of people Act regulates trade in food articles which are prone to wide-spread malpractices which are controlled by its stringent provisions Adulteration of food has often led to large human tragedies - Court is required to bear in mind that Act is enacted with a view to see that public health is not affected."

The prosecution against the accused indulging in adulteration is always in the public interest. The Act has been enacted with the aim of eradicating that anti social evil and for ensuring purity in the article of food. There is no merit in what is submitted by learned Advocate for respondent.

6. So far as the accused No.2 is concerned, Mr.

Desai could not point out from the material placed on record that the warranty is proved in accordance with the provisions contained in the Act. The accused No.2 appears to have been joined as an accused, because the accused No.1 produced the bill indicating that accused No.2 supplied the article in question. It is also required to be noted that there is no evidence that accused No.1 stored the article and sold the same in the same condition as he purchased. Section 19[2] of the Act requires that vendor has to prove that he purchased the article of food from manufacturer, distributor or dealer. Section 19 [2] of the Act reads as under :

19. Defences which may or may not be allowed in prosecutions under this Act -

[1] .....

[2] A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves -

[a] that he purchased the article of food -

[i] in case where a license is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

[ii] in any other case, from any manufacturer, distributor or dealer, with a written warranty in the prescribed form; and

[b] that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

[3]. .....

On behalf of the Accused No.2, the complainant was cross examined. From the evidence, it appears that oil tin from which sample was collected, there was no

label or marking. The tin was of capacity of 15 kgs and when the sample was collected, the tin was open containing about 12 kgs of ground nut oil. Complainant also stated that from the tin, oil can be taken out and oil can be added also. He has also stated that he cannot say that at what stage adulteration took place. Thus, there is no specific and satisfactory evidence about the article of food purchased from Accused No.2 and that the same was properly stored. Reading section 19[2] and Rule 12-A, it is very clear that the vendor for exonerating himself has to prove that he purchased the article of food with a written warranty and that he stored in the same condition as he purchased it.

In the case of Murlidhar Shyamlal V/s State of Assam reported in [1996] 7 SCC 495, on the container, there was a printed label reading as "New Rice & Oil Mill, Raha, pure mustard oil [Biswanath Brand] nett wt. 16 kg." The Apex Court in paragraph 9 held as under :-

"It would only indicate that the packed tin containing the same weighing 16 kg. [nett] with a printed label on it "New Rice & Oil Mill, Raha, pure mustard oil [Biswanath Brand] nett wt. 16 kg." was stored for sale in the said premises. From this, it is contended that the appellant had the warranty and that, therefore, by operation of section 19[2] read with Rule 12-A, the appellant is absolved of his liability to be prosecuted for sale of the adulterated article of food. We are afraid that we cannot accept the contention. In view of the above warranty as envisaged under Form VI-A, there must be specific mention therein by the dealer or distributor or manufacturer, that the article of food sold was in the same nature and quality of the article of food, as the case may be. Then only he would get acquitted, though the article of food was found adulterated. It would be then open to the prosecution to proceed against the manufacturer, dealer or distributor."

In the instant case, neither the accused No.1 nor

anyone on behalf of the accused No.1 has entered the witness box to prove the warranty and/or bill.

It was submitted by the learned advocate for the accused that in view of proviso to section 14, the bill is deemed to be a warranty. The said section with proviso reads as under:-

"14. No manufacturer or distributor of, or dealer in any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor:

Provided that a bill, cash memorandum or invoice in respect of the sale of any article of food given by a manufacturer or distributor of, or dealer in such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this section."

Thus, in absence of proof, accused No.2 cannot be convicted. Accused No.1 could have proved the transaction in question by entering the witness box or by leading other evidence. Having not done so, the order of acquittal requires no interference on this ground so far as Accused No.2 is concerned.

7. It is in these circumstances, the order of acquittal in so far as accused No.1 is concerned, is required to be quashed and set aside and is hereby quashed. If the Court is convicting the accused for an offence for which minimum punishment is prescribed, then in that case, there is no question of hearing the accused on the question of sentence.

8. Mr. S.P.Hasurkar, learned Advocate appearing for the accused submitted that, in view of section 248[2] of the Code of Criminal Procedure, if the accused is convicted, the Court unless proceeds in accordance with the provision of section 360, has to hear the accused on the question of sentence and thereafter, the Court has to pass the sentence in accordance with law. He submitted that even in case where accused is punished u/s 302 of the Penal Code, it becomes the duty of the Court to hear

the accused on the question of sentence. It is required to be noted that when the Statute prescribes minimum sentence, then even if the accused is heard on the question of sentence, the minimum sentence is to be imposed. However, if the Court has to exercise the discretion in imposing sentence, i.e. where minimum is not prescribed, then the question of hearing the accused would arise. If the accused is convicted for an offence u/s 302 IPC and if the Court is of the view that punishment provided for this offence which is minimum is to be imposed, then there may not be question of hearing the accused on the question of sentence, but if the Court is of the opinion that more than the minimum sentence is required to be imposed, then the Court has to hear the accused on the question of sentence. When there is a discretion with the Court, no doubt the court will have to hear the accused on the question of sentence. But when minimum sentence is prescribed and the Court is awarding that minimum sentence, there may not be question of hearing the accused as contemplated u/s 235 [2] of the Code of Criminal Procedure. The apex Court in case of Tarlok Singh v/s State of Punjab AIR 1977 SC 1747 in para-2 pointed out as under :-

> "Section 235, Cr.P.C. [1974] makes a departure from the previous Code on account of humanist considerations to personalize the sentence to be awarded. The object of the provision is to give a fresh opportunity to the convicted person to bring to the notice of the court such circumstances as may help the court in awarding an appropriate sentence having regard to the personal, social and other circumstances of the case. Of course, when it is a case of conviction u/s 302, IPC, if the minimum sentence is imposed, the question of providing an opportunity u/s 235 would not arise." [emphasis supplied]

9. Thus, when it is a case of conviction u/s 302 IPC and if the minimum sentence is imposed, the question of providing an opportunity u/s 235 would not arise. In the facts and circumstances of the case, the Court is awarding minimum sentence as provided in section - 16[1] [a] [i] of the Prevention of Food Adulteration Act, 1958. The respondent No.1 accused No.1 need not be given an opportunity of hearing as contemplated u/s 248[2] of Criminal Procedure Code. Punishment prescribed under section 16[1][a][i] is for a term which shall not be less than six months but which may extend to three years and

with a fine which shall not be less than one thousand rupees. As the accused no.1 is convicted for an offence punishable u/s 16[1][a][i] of the Act and minimum sentence provided under the provision is of six months Imprisonment and a fine of Rupees one thousand, is awarded, there is no question of hearing the accused u/s 248[2] of Criminal Procedure Code.

10. The sample was collected on 6/1/1987. The Court is recording an order of conviction after a period of 11 years. The Apex Court in the cases of Badriprasad V/s State of M.P. reported in 1995 [Suppl] 4 SCC 682, N. Sukumaran Nair V/s Food Inspector reported in 1997 [9] SCC 101, Ganeshmal Jashraj V/s State of Gujarat reported in 1980 SC 264, considered the delay. The Court also pointed out that small vendors are prosecuted and manufacturers, distributors or dealers are not prosecuted. Considering the delay, the State Government shall decide the application that may be made by the accused No.1 for exercise of powers u/s 433 of Criminal Procedure Code if made within four months from today. The authority shall while deciding the application take into consideration the principles laid down in the aforesaid cases.

11. In the circumstances, as narrated hereinabove, original accused No.1 is held guilty for an offence punishable u/s 16[1][a][i] of the Prevention of Food Adulteration Act, 1958. The order of acquittal recorded by the trial Court in so far as accused No.1 is concerned, is quashed and set aside and the accused No.1 is sentenced to undergo imprisonment for a period of six months and is sentenced to pay a fine of Rs.1,000/- [in default of payment of fine, 15 days imprisonment]. So far as accused No.2 is concerned, the appeal stands dismissed.

Accused is directed to pay the amount of fine within a period of three months and shall surrender within four months.

Appeal allowed accordingly.

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